

FILED

February 22, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**United States Court of Appeals
for the Fifth Circuit**

BY: klw
DEPUTY

No. 23-50632

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GREG ABBOTT, *in his capacity as Governor of the State of Texas*; STATE
OF TEXAS,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-853 DAE

ORDER:

IT IS ORDERED that Appellants' unopposed motion to
supplement the record on appeal is GRANTED.

LYLE W. CAYCE, CLERK
United States Court of Appeals
for the Fifth Circuit
/s/ Lyle W. Cayce

ENTERED AT THE DIRECTION OF THE COURT

No. 23-50632

**In the United States Court of Appeals
for the Fifth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

GREG ABBOTT, IN HIS CAPACITY AS GOVERNOR
OF THE STATE OF TEXAS; STATE OF TEXAS,
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division

**APPELLANTS' UNOPPOSED MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

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COY ALLEN WESTBROOK
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Counsel for Defendants-Appellants

CERTIFICATE OF INTERESTED PERSONS

No. 23-50632

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREG ABBOTT, IN HIS CAPACITY AS GOVERNOR OF THE STATE OF
TEXAS; STATE OF TEXAS,

Defendants-Appellants.

Under the fourth sentence of Fifth Circuit Rule 28.2.1, Appellants, as governmental parties, need not furnish a certificate of interested persons.

/s/ Aaron L. Nielson

AARON L. NIELSON

Counsel of Record for

Defendants-Appellants

Pursuant to Federal Rule of Appellate Procedure 10(e)(2) and Fifth Circuit Rule 27.1.11, Appellants Governor Greg Abbott and the State of Texas respectfully request that the Court supplement the record on appeal (“ROA”) by adding the transcript of the August 22, 2023, preliminary-injunction hearing, listed at docket number 56 in the district court. *See* Transcript of Preliminary Injunction Hearing, *United States v. Abbott*, No. 1:23-cv-853 (W.D. Tex. Sept. 19, 2023), ECF No. 56.

1. Because this case has proceeded on an expedited basis, the transcript of the preliminary-injunction hearing is not part of the current ROA. That ROA was transmitted to this Court on September 12, 2023, *see* ECF Nos. 43-44, while the transcript of the preliminary-injunction hearing was not filed in the district court until September 19, *see* Transcript of Preliminary Injunction Hearing, *supra*.

2. Adding this transcript is necessary both for the ease of the Court and the parties, and to ensure a thorough examination of the district court’s order granting a preliminary injunction, currently under consideration by the en banc Court. The United States, as well as the Governor and the State, have already relied on this transcript in their briefing before the panel. *See, e.g.*, ECF No. 61 at 2; ECF No. 78 at 27, and the United States does not oppose this motion. Moreover, no party will be prejudiced by the supplementation, and it will further the interests of justice for the Court to have the transcript of the preliminary-injunction hearing before it while it considers the propriety of the district court’s order.

3. For the foregoing reasons, Governor Abbott and the State respectfully request that the Court grant this unopposed motion to supplement the record on appeal.

Date: February 13, 2024

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

/s/ Aaron L. Nielson
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COY ALLEN WESTBROOK
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Counsel for Defendants-Appellants

CERTIFICATE OF CONFERENCE

On February 13, 2024, the parties conferred regarding this motion, and counsel for Appellee is unopposed to the relief requested.

/s/ Aaron L. Nielson
AARON L. NIELSON

CERTIFICATE OF SERVICE

On February 13, 2024, this document was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Aaron L. Nielson
AARON L. NIELSON

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 284 words, excluding exempted text; and (2) the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Aaron L. Nielson
AARON L. NIELSON

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

February 22, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-50632 USA v. Abbott
USDC No. 1:23-CV-853

Enclosed is an order entered in this case.

The court has granted the motion to supplement or correct the record in this case. The originating court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Ms. Munera Al-Fuhaid
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Mr. Monroe David Bryant Jr.
Mr. William Francis Cole
Mr. Matt A. Crapo
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